

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

) MDL No. 1456
) Master File No. 1:01-CV-12257-PBS
) Sub-Category Case No. 1:08-CV-11200
)

THIS DOCUMENT RELATES TO:
*United States ex rel. Linnette Sun and Greg
Hamilton, Relators*
v.
*Baxter Hemoglobin Therapeutics and Baxter
International Inc.*

) Judge Patti B. Saris
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[PROPOSED] ORDER

The Court has considered the parties' briefing concerning Baxter International Inc.'s Motion To Dismiss Relators' Complaint and finds and orders as follows:

1. Count I is dismissed with prejudice for lack of subject matter jurisdiction and/or failure to allege fraud with the particularity required by Fed. R. Civ. P. 9(b).
2. Count II is dismissed with prejudice by concession of the Relators.
3. Count III is dismissed with prejudice for lack of subject matter jurisdiction and/or failure to allege fraud with the particularity required by Fed. R. Civ. P. 9(b).
4. Count IV is remanded to the District of Colorado.
5. Count V is remanded to the District of Colorado.
6. Count VI is remanded to the District of Colorado.
7. Count VII is dismissed with prejudice for lack of subject matter jurisdiction and/or failure to allege fraud with the particularity required by Fed. R. Civ. P. 9(b).
8. Count VIII is dismissed with prejudice for lack of subject matter jurisdiction, and/or for failure to allege fraud with the particularity required by Fed. R. Civ. P. 9(b), and/or under the "first to file" rule, and/or under the doctrine of accord and satisfaction.

9. Count IX is dismissed with prejudice for lack of subject matter jurisdiction, and/or for failure to allege fraud with the particularity required by Fed. R. Civ. P. 9(b), and/or under the “first to file” rule, and/or under the doctrine of accord and satisfaction.

10. Count X is dismissed with prejudice for lack of subject matter jurisdiction, and/or for failure to allege fraud with the particularity required by Fed. R. Civ. P. 9(b), and/or under the “first to file” rule, and/or under the doctrine of accord and satisfaction.

11. Count XI is dismissed with prejudice for lack of subject matter jurisdiction and/or failure to allege fraud with the particularity required by Fed. R. Civ. P. 9(b).

12. Count XII is dismissed with prejudice by concession of the Relators.

13. Count XIII is dismissed with prejudice for lack of subject matter jurisdiction and/or failure to allege fraud with the particularity required by Fed. R. Civ. P. 9(b).

14. Count XIV is dismissed with prejudice for lack of subject matter jurisdiction and/or failure to allege fraud with the particularity required by Fed. R. Civ. P. 9(b).

15. Count XV is dismissed with prejudice for lack of subject matter jurisdiction and/or failure to allege fraud with the particularity required by Fed. R. Civ. P. 9(b).

16. Count XVI is dismissed with prejudice by concession of the Relators.

17. Count XVII is dismissed with prejudice for lack of subject matter jurisdiction and/or failure to allege fraud with the particularity required by Fed. R. Civ. P. 9(b).

18. Count XVIII is dismissed with prejudice for lack of subject matter jurisdiction and/or failure to allege fraud with the particularity required by Fed. R. Civ. P. 9(b).

19. Count XIX is dismissed with prejudice for lack of subject matter jurisdiction and/or failure to allege fraud with the particularity required by Fed. R. Civ. P. 9(b).

20. Count XX is dismissed with prejudice by concession of the Relators.

21. Count XXI is dismissed with prejudice by concession of the Relators.

- 22. Count XXII is remanded to the District of Colorado.
- 23. Count XXIII is remanded to the District of Colorado.
- 24. Relators' request for leave to amend the Complaint to include federal and state Anti-Kickback claims is denied.

Dated: _____

Patti B. Saris
United States District Judge